

Union Calendar No. 228

111TH CONGRESS
2^D SESSION

H. R. 1065

[Report No. 111-391]

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2009

Mrs. KIRKPATRICK of Arizona introduced the following bill; which was referred to the Committee on Natural Resources

JANUARY 12, 2010

Additional sponsors: Mr. SHADEGG, Ms. GIFFORDS, Mr. PASTOR of Arizona, Mr. MITCHELL, Mr. FRANKS of Arizona, Mr. FLAKE, and Mr. GRIJALVA

JANUARY 12, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on February 13, 2009]

A BILL

To resolve water rights claims of the White Mountain Apache
Tribe in the State of Arizona, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “White Mountain Apache*
5 *Tribe Water Rights Quantification Act of 2009”.*

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 *(a) FINDINGS.—Congress finds that—*

8 *(1) proceedings to determine the nature and ex-*
9 *tent of the water rights of the White Mountain Apache*
10 *Tribe, members of the Tribe, the United States, and*
11 *other claimants are pending in—*

12 *(A) the consolidated civil action in the Su-*
13 *perior Court of the State of Arizona for the*
14 *County of Maricopa styled In re the General Ad-*
15 *judication of All Rights To Use Water In The*
16 *Gila River System and Source, W–1 (Salt), W–*
17 *2 (Verde), W–3 (Upper Gila), W–4 (San Pedro);*
18 *and*

19 *(B) the civil action pending in the Superior*
20 *Court of the State of Arizona for the County of*
21 *Apache styled In re the General Adjudication of*
22 *All Rights to Use Water in the Little Colorado*
23 *River System and Source and numbered CIV–*
24 *6417;*

1 (2) *a final resolution of those proceedings*
2 *might—*

3 *(A) take many years;*

4 *(B) entail great expense; and*

5 *(C) prolong uncertainty concerning the*
6 *availability of water supplies;*

7 (3) *the Tribe, non-Indian communities located*
8 *near the reservation of the Tribe, and other Arizona*
9 *water users have entered into the WMAT Water*
10 *Rights Quantification Agreement—*

11 *(A) to permanently quantify the water*
12 *rights of the Tribe, members of the Tribe, and the*
13 *United States in its capacity as trustee for the*
14 *Tribe and members in accordance with the*
15 *Agreement; and*

16 *(B) to seek funding, in accordance with ap-*
17 *plicable law, for the implementation of the*
18 *Agreement;*

19 (4) *it is the policy of the United States to quan-*
20 *tify and settle Indian water rights claims, and to*
21 *promote Indian self-determination and economic self-*
22 *sufficiency, without lengthy and costly litigation, if*
23 *practicable;*

24 (5) *certainty concerning the extent of the water*
25 *rights of the Tribe will—*

1 (A) provide opportunities for economic de-
2 velopment of all parties to the proceeding; and

3 (B) assist the Tribe to achieve self-deter-
4 mination and self-sufficiency; and

5 (6) in keeping with the trust responsibility of the
6 United States to Indian tribes, and to promote tribal
7 sovereignty and economic self-sufficiency, it is appro-
8 priate that the United States implement the Agree-
9 ment.

10 (b) *PURPOSES.*—The purposes of this Act are—

11 (1) to authorize, ratify, and confirm the Agree-
12 ment;

13 (2) to authorize and direct the Secretary to exe-
14 cute the Agreement and carry out all obligations of
15 the Secretary under the Agreement;

16 (3) to authorize the actions and appropriations
17 necessary for the United States to meet the obligations
18 of the United States under the Agreement and this
19 Act; and

20 (4) to permanently resolve certain damage
21 claims and all water rights claims among—

22 (A) the Tribe and its members;

23 (B) the United States in its capacity as
24 trustee for the Tribe and its members;

25 (C) the parties to the Agreement; and

1 (D) all other claimants in the proceedings
2 referred to in subsection (a)(1).

3 **SEC. 3. DEFINITIONS.**

4 *In this Act:*

5 (1) *AGREEMENT.*—*The “Agreement” means—*

6 (A) *the WMAT Water Rights Quantification*
7 *Agreement dated January 13, 2009; and*

8 (B) *any amendment or exhibit (including*
9 *exhibit amendments) to that agreement that*
10 *are—*

11 (i) *made in accordance with this Act;*

12 *or*

13 (ii) *otherwise approved by the Sec-*
14 *retary.*

15 (2) *BUREAU.*—*The term “Bureau” means the*
16 *Bureau of Reclamation.*

17 (3) *CAP.*—*The term “CAP” means the reclama-*
18 *tion project authorized and constructed by the United*
19 *States in accordance with title III of the Colorado*
20 *River Basin Project Act (43 U.S.C. 1521 et seq.).*

21 (4) *CAP CONTRACTOR.*—*The term “CAP con-*
22 *tractor” means an individual or entity that has en-*
23 *tered into a long-term contract (as that term is used*
24 *in the repayment stipulation) with the United States*
25 *for delivery of water through the CAP system.*

1 (5) *CAP FIXED OM&R CHARGE.*—*The term “CAP*
 2 *fixed OM&R charge” has the meaning given the term*
 3 *in the repayment stipulation.*

4 (6) *CAP M&I PRIORITY WATER.*—*The term “CAP*
 5 *M&I priority water” means the CAP water having a*
 6 *municipal and industrial delivery priority under the*
 7 *repayment contract.*

8 (7) *CAP SUBCONTRACTOR.*—*The term “CAP sub-*
 9 *contractor” means an individual or entity that has*
 10 *entered into a long-term subcontract (as that term is*
 11 *used in the repayment stipulation) with the United*
 12 *States and the District for the delivery of water*
 13 *through the CAP system.*

14 (8) *CAP SYSTEM.*—*The term “CAP system”*
 15 *means—*

16 (A) *the Mark Wilmer Pumping Plant;*

17 (B) *the Hayden-Rhodes Aqueduct;*

18 (C) *the Fannin-McFarland Aqueduct;*

19 (D) *the Tucson Aqueduct;*

20 (E) *any pumping plant or appurtenant*
 21 *works of a feature described in any of subpara-*
 22 *graphs (A) through (D); and*

23 (F) *any extension of, addition to, or re-*
 24 *placement for a feature described in any of sub-*
 25 *paragraphs (A) through (E).*

1 (9) *CAP WATER*.—*The term “CAP water” means*
 2 *“Project Water” (as that term is defined in the repay-*
 3 *ment stipulation).*

4 (10) *CONTRACT*.—*The term “Contract” means—*

5 (A) *the proposed contract between the Tribe*
 6 *and the United States attached as exhibit 7.1 to*
 7 *the Agreement and numbered 08–XX–30–W0529;*
 8 *and*

9 (B) *any amendments to that contract.*

10 (11) *DISTRICT*.—*The term “District” means the*
 11 *Central Arizona Water Conservation District, a polit-*
 12 *ical subdivision of the State that is the contractor*
 13 *under the repayment contract.*

14 (12) *ENFORCEABILITY DATE*.—*The term “en-*
 15 *forceability date” means the date described in section*
 16 *9(d)(1).*

17 (13) *INDIAN TRIBE*.—*The term “Indian tribe”*
 18 *has the meaning given the term in section 4 of the In-*
 19 *dian Self-Determination and Education Assistance*
 20 *Act (25 U.S.C. 450b).*

21 (14) *INJURY TO WATER RIGHTS*.—

22 (A) *IN GENERAL*.—*The term “injury to*
 23 *water rights” means an interference with, dimi-*
 24 *nutiion of, or deprivation of, a water right under*
 25 *Federal, State, or other law.*

1 (B) *INCLUSIONS.*—*The term “injury to*
 2 *water rights” includes—*

3 (i) *a change in the groundwater table;*
 4 *and*
 5 (ii) *any effect of such a change.*

6 (C) *EXCLUSION.*—*The term “injury to*
 7 *water rights” does not include any injury to*
 8 *water quality.*

9 (15) *LOWER COLORADO RIVER BASIN DEVELOP-*
 10 *MENT FUND.*—*The term “Lower Colorado River*
 11 *Basin Development Fund” means the fund established*
 12 *by section 403 of the Colorado River Basin Project*
 13 *Act (43 U.S.C. 1543).*

14 (16) *OFF-RESERVATION TRUST LAND.*—*The term*
 15 *“off-reservation trust land” means land—*

16 (A) *located outside the exterior boundaries*
 17 *of the reservation that is held in trust by the*
 18 *United States for the benefit of the Tribe as of*
 19 *the enforceability date; and*

20 (B) *depicted on the map attached to the*
 21 *Agreement as exhibit 2.57.*

22 (17) *OPERATING AGENCY.*—*The term “Operating*
 23 *Agency” means the 1 or more entities authorized to*
 24 *assume responsibility for the care, operation, mainte-*
 25 *nance, and replacement of the CAP system.*

1 (18) *REPAYMENT CONTRACT*.—The term “repay-
2 ment contract” means—

3 (A) the contract between the United States
4 and the District for delivery of water and repay-
5 ment of the costs of the CAP, numbered 14–06–
6 W–245 (Amendment No. 1), and dated December
7 1, 1988; and

8 (B) any amendment to, or revision of, that
9 contract.

10 (19) *REPAYMENT STIPULATION*.—The term “re-
11 payment stipulation” means the stipulated judgment
12 and the stipulation for judgment (including any ex-
13 hibits to those documents) entered on November 21,
14 2007, in the United States District Court for the Dis-
15 trict of Arizona in the consolidated civil action styled
16 Central Arizona Water Conservation District v.
17 United States, et al., and numbered CIV 95–625–
18 TUC–WDB (EHC) and CIV 95–1720–PHX–EHC.

19 (20) *RESERVATION*.—

20 (A) *IN GENERAL*.—The term “reservation”
21 means the land within the exterior boundary of
22 the White Mountain Indian Reservation estab-
23 lished by the Executive order dated November 9,
24 1871, as modified by subsequent Executive orders
25 and Acts of Congress—

1 (i) known on the date of enactment of
 2 this Act as the “Fort Apache Reservation”
 3 pursuant to the Act of June 7, 1897 (30
 4 Stat. 62, chapter 3); and

5 (ii) generally depicted on the map at-
 6 tached to the Agreement as exhibit 2.81.

7 (B) NO EFFECT ON DISPUTE OR AS ADMIS-
 8 SION.—The depiction of the reservation described
 9 in subparagraph (A)(ii) shall not—

10 (i) be used to affect any dispute be-
 11 tween the Tribe and the United States con-
 12 cerning the legal boundary of the reserva-
 13 tion; and

14 (ii) constitute an admission by the
 15 Tribe with regard to any dispute between
 16 the Tribe and the United States concerning
 17 the legal boundary of the reservation.

18 (21) SECRETARY.—The term “Secretary” means
 19 the Secretary of the Interior.

20 (22) STATE.—The term “State” means the State
 21 of Arizona.

22 (23) TRIBAL CAP WATER.—The term “tribal
 23 CAP water” means the CAP water to which the Tribe
 24 is entitled pursuant to the Contract.

1 (24) *TRIBAL WATER RIGHTS.*—*The term “tribal*
 2 *water rights” means the water rights of the Tribe de-*
 3 *scribed in paragraph 4.0 of the Agreement.*

4 (25) *TRIBE.*—*The term “Tribe” means the White*
 5 *Mountain Apache Tribe organized under section 16 of*
 6 *the Act of June 18, 1934 (commonly known as the*
 7 *“Indian Reorganization Act”) (25 U.S.C. 476).*

8 (26) *WATER RIGHT.*—*The term “water right”*
 9 *means any right in or to groundwater, surface water,*
 10 *or effluent under Federal, State, or other law.*

11 (27) *WMAT RURAL WATER SYSTEM.*—*The term*
 12 *“WMAT rural water system” means the municipal,*
 13 *rural, and industrial water diversion, storage, and*
 14 *delivery system described in section 7.*

15 (28) *YEAR.*—*The term “year” means a calendar*
 16 *year.*

17 **SEC. 4. APPROVAL OF AGREEMENT.**

18 (a) *APPROVAL.*—

19 (1) *IN GENERAL.*—*Except to the extent that any*
 20 *provision of the Agreement conflicts with a provision*
 21 *of this Act, the Agreement is authorized, ratified, and*
 22 *confirmed.*

23 (2) *AMENDMENTS.*—*Any amendment to the*
 24 *Agreement is authorized, ratified, and confirmed, to*

1 *the extent that such an amendment is executed to*
 2 *make the Agreement consistent with this Act.*

3 **(b) EXECUTION OF AGREEMENT.**—*To the extent that*
 4 *the Agreement does not conflict with this Act, the Secretary*
 5 *shall—*

6 *(1) execute the Agreement (including signing any*
 7 *exhibit to the Agreement requiring the signature of*
 8 *the Secretary); and*

9 *(2) execute any amendment to the Agreement*
 10 *necessary to make the Agreement consistent with this*
 11 *Act.*

12 **(c) NATIONAL ENVIRONMENTAL POLICY ACT.**—

13 **(1) ENVIRONMENTAL COMPLIANCE.**—*In imple-*
 14 *menting the Agreement, the Secretary shall promptly*
 15 *comply with all applicable requirements of—*

16 *(A) the National Environmental Policy Act*
 17 *of 1969 (42 U.S.C. 4321 et seq.);*

18 *(B) the Endangered Species Act of 1973 (16*
 19 *U.S.C. 1531 et seq.);*

20 *(C) all other applicable Federal environ-*
 21 *mental laws; and*

22 *(D) all regulations promulgated under the*
 23 *laws described in subparagraphs (A) through*
 24 *(C).*

25 **(2) EXECUTION OF AGREEMENT.**—

1 (A) *IN GENERAL.*—*Execution of the Agree-*
 2 *ment by the Secretary under this section shall*
 3 *not constitute a major Federal action under the*
 4 *National Environmental Policy Act of 1969 (42*
 5 *U.S.C. 4321 et seq.).*

6 (B) *ENVIRONMENTAL COMPLIANCE.*—*The*
 7 *Secretary shall carry out all necessary environ-*
 8 *mental compliance required by Federal law in*
 9 *implementing the Agreement.*

10 (3) *LEAD AGENCY.*—*The Bureau shall serve as*
 11 *the lead agency with respect to ensuring environ-*
 12 *mental compliance associated with the WMAT rural*
 13 *water system.*

14 **SEC. 5. WATER RIGHTS.**

15 (a) *TREATMENT OF TRIBAL WATER RIGHTS.*—*The*
 16 *tribal water rights—*

17 (1) *shall be held in trust by the United States in*
 18 *perpetuity; and*

19 (2) *shall not be subject to forfeiture or abandon-*
 20 *ment.*

21 (b) *REALLOCATION.*—

22 (1) *IN GENERAL.*—*In accordance with this Act*
 23 *and the Agreement, the Secretary shall reallocate to*
 24 *the Tribe, and offer to enter into a contract with the*

1 *Tribe for the delivery in accordance with this section*
2 *of—*

3 *(A) an annual entitlement to 23,782 acre-*
4 *feet per year of CAP water that has a non-In-*
5 *dian agricultural delivery priority (as defined in*
6 *the Contract) in accordance with section*
7 *104(a)(1)(A)(iii) of the Arizona Water Settle-*
8 *ments Act (Public Law 108–451; 118 Stat.*
9 *3488), of which—*

10 *(i) 3,750 acre-feet per year shall be*
11 *firmed by the United States for the benefit*
12 *of the Tribe for the 100-year period begin-*
13 *ning on January 1, 2008, with priority*
14 *equivalent to CAP M&I priority water, in*
15 *accordance with section 105(b)(1)(B) of that*
16 *Act (118 Stat. 3492); and*

17 *(ii) 3,750 acre-feet per year shall be*
18 *firmed by the State for the benefit of the*
19 *Tribe for the 100-year period beginning on*
20 *January 1, 2008, with priority equivalent*
21 *to CAP M&I priority water, in accordance*
22 *with section 105(b)(2)(B) of that Act (118*
23 *Stat. 3492); and*

24 *(B) an annual entitlement to 1,218 acre-feet*
25 *per year of the water—*

1 (i) *acquired by the Secretary through*
 2 *the permanent relinquishment of the*
 3 *Harquahala Valley Irrigation District CAP*
 4 *subcontract entitlement in accordance with*
 5 *the contract numbered 3-07-30-W0290*
 6 *among the District, Harquahala Valley Ir-*
 7 *rigation District, and the United States;*
 8 *and*

9 (ii) *converted to CAP Indian Priority*
 10 *water (as defined in the Contract) pursuant*
 11 *to the Fort McDowell Indian Community*
 12 *Water Rights Settlement Act of 1990 (Pub-*
 13 *lic Law 101-628; 104 Stat. 4480).*

14 (2) *AUTHORITY OF TRIBE.*—Subject to approval
 15 *by the Secretary under section 6(a)(1), the Tribe shall*
 16 *have the sole authority to lease, distribute, exchange,*
 17 *or allocate the tribal CAP water described in para-*
 18 *graph (1).*

19 (c) *WATER SERVICE CAPITAL CHARGES.*—The Tribe
 20 *shall not be responsible for any water service capital charge*
 21 *for tribal CAP water.*

22 (d) *ALLOCATION AND REPAYMENT.*—For the purpose
 23 *of determining the allocation and repayment of costs of any*
 24 *stages of the CAP constructed after November 21, 2007, the*
 25 *costs associated with the delivery of water described in sub-*

1 *section (b), regardless of whether the water is delivered for*
2 *use by the Tribe or in accordance with any assignment,*
3 *exchange, lease, option to lease, or other agreement for the*
4 *temporary disposition of water entered into by Tribe, shall*
5 *be—*

6 *(1) nonreimbursable; and*

7 *(2) excluded from the repayment obligation of*
8 *the District.*

9 *(e) WATER CODE.—Not later than 18 months after the*
10 *enforceability date, the Tribe shall enact a water code*
11 *that—*

12 *(1) governs the tribal water rights; and*

13 *(2) includes, at a minimum—*

14 *(A) provisions requiring the measurement,*
15 *calculation, and recording of all diversions and*
16 *depletions of water on the reservation and on off-*
17 *reservation trust land;*

18 *(B) terms of a water conservation plan, in-*
19 *cluding objectives, conservation measures, and an*
20 *implementation timeline;*

21 *(C) provisions requiring the approval of the*
22 *Tribe for the severance and transfer of rights to*
23 *the use of water from historically irrigated land*
24 *identified in paragraph 11.3.2.1 of the Agree-*
25 *ment to diversions and depletions on other non-*

1 *historically irrigated land not located on the wa-*
 2 *tershed of the same water source; and*

3 *(D) provisions requiring the authorization*
 4 *of the Tribe for all diversions of water on the res-*
 5 *ervation and on off-reservation trust land by any*
 6 *individual or entity other than the Tribe.*

7 **SEC. 6. CONTRACT.**

8 *(a) IN GENERAL.—The Secretary shall enter into the*
 9 *Contract, in accordance with the Agreement, to provide,*
 10 *among other things, that—*

11 *(1) the Tribe, on approval of the Secretary,*
 12 *may—*

13 *(A) enter into contracts or options to lease,*
 14 *contracts to exchange, or options to exchange*
 15 *tribal CAP water in Maricopa, Pinal, Pima,*
 16 *and Yavapai Counties in the State providing for*
 17 *the temporary delivery to any individual or en-*
 18 *tity of any portion of the tribal CAP water, sub-*
 19 *ject to the condition that—*

20 *(i) the term of the contract or option to*
 21 *lease shall not be longer than 100 years;*

22 *(ii) the contracts or options to ex-*
 23 *change shall be for the term provided in the*
 24 *contract or option; and*

1 (iii) a lease or option to lease pro-
2 viding for the temporary delivery of tribal
3 CAP water shall require the lessee to pay to
4 the Operating Agency all CAP fixed OM&R
5 charges and all CAP pumping energy
6 charges (as defined in the repayment stipu-
7 lation) associated with the leased water;
8 and

9 (B) renegotiate any lease at any time dur-
10 ing the term of the lease, subject to the condition
11 that the term of the renegotiated lease shall not
12 exceed 100 years;

13 (2) no portion of the tribal CAP water may be
14 permanently alienated;

15 (3)(A) the Tribe (and not the United States in
16 any capacity) shall be entitled to all consideration
17 due to the Tribe under any contract or option to lease
18 or exchange tribal CAP water entered into by the
19 Tribe; and

20 (B) the United States (in any capacity) has no
21 trust or other obligation to monitor, administer, or
22 account for, in any manner—

23 (i) any funds received by the Tribe as con-
24 sideration under a contract or option to lease or
25 exchange tribal CAP water; or

1 (ii) the expenditure of those funds;

2 (4)(A) all tribal CAP water shall be delivered
3 through the CAP system; and

4 (B) if the delivery capacity of the CAP system
5 is significantly reduced or anticipated to be signifi-
6 cantly reduced for an extended period of time, the
7 Tribe shall have the same CAP delivery rights as a
8 CAP contractor or CAP subcontractor that is allowed
9 to take delivery of water other than through the CAP
10 system;

11 (5) the Tribe may use tribal CAP water on or
12 off the reservation for any purpose;

13 (6) as authorized by subsection (f)(2)(A) of sec-
14 tion 403 of the Colorado River Basin Project Act (43
15 U.S.C. 1543) and to the extent that funds are avail-
16 able in the Lower Colorado River Basin Development
17 Fund established by subsection (a) of that section, the
18 United States shall pay to the Operating Agency the
19 CAP fixed OM&R charges associated with the delivery
20 of tribal CAP water (except in the case of tribal CAP
21 water leased by any individual or entity);

22 (7) the Secretary shall waive the right of the Sec-
23 retary to capture all return flow from project ex-
24 change water flowing from the exterior boundary of
25 the reservation; and

1 (8) *no CAP water service capital charge shall be*
2 *due or payable for the tribal CAP water, regardless*
3 *of whether the water is delivered for use by the Tribe*
4 *or pursuant to a contract or option to lease or ex-*
5 *change tribal CAP water entered into by the Tribe.*

6 (b) *REQUIREMENTS.—The Contract shall be—*

7 (1) *for permanent service (within the meaning of*
8 *section 5 of the Boulder Canyon Project Act (43*
9 *U.S.C. 617d)); and*

10 (2) *without limit as to term.*

11 (c) *RATIFICATION.—*

12 (1) *IN GENERAL.—Except to the extent that any*
13 *provision of the Contract conflicts with a provision of*
14 *this Act, the Contract is authorized, ratified, and con-*
15 *firmed.*

16 (2) *AMENDMENTS.—Any amendment to the Con-*
17 *tract is authorized, ratified, and confirmed, to the ex-*
18 *tent that such an amendment is executed to make the*
19 *Contract consistent with this Act.*

20 (d) *EXECUTION OF CONTRACT.—To the extent that the*
21 *Contract does not conflict with this Act, the Secretary shall*
22 *execute the Contract.*

23 (e) *PAYMENT OF CHARGES.—The Tribe, and any re-*
24 *cipient of tribal CAP water through a contract or option*
25 *to lease or exchange, shall not be obligated to pay a water*

1 *service capital charge or any other charge, payment, or fee*
2 *for CAP water, except as provided in an applicable lease*
3 *or exchange agreement.*

4 (f) *PROHIBITIONS.—*

5 (1) *USE OUTSIDE STATE.—No tribal CAP water*
6 *may be leased, exchanged, forborne, or otherwise*
7 *transferred by the Tribe in any way for use directly*
8 *or indirectly outside the State.*

9 (2) *USE OFF RESERVATION.—Except as author-*
10 *ized by this section and paragraph 4.7 of the Agree-*
11 *ment, no tribal water rights under this Act may be*
12 *sold, leased, transferred, or used outside the bound-*
13 *aries of the reservation or off-reservation trust land*
14 *other than pursuant to an exchange.*

15 (3) *AGREEMENTS WITH ARIZONA WATER BANK-*
16 *ING AUTHORITY.—Nothing in this Act or the Agree-*
17 *ment limits the right of the Tribe to enter into an*
18 *agreement with the Arizona Water Banking Authority*
19 *established by section 45–2421 of the Arizona Revised*
20 *Statutes (or any successor entity), in accordance with*
21 *State law.*

22 (g) *LEASES.—*

23 (1) *IN GENERAL.—To the extent the leases of*
24 *tribal CAP Water by the Tribe to the District and to*
25 *any of the cities, attached as exhibits to the Agree-*

1 *ment, are not in conflict with the provisions of this*
 2 *Act—*

3 *(A) those leases are authorized, ratified, and*
 4 *confirmed; and*

5 *(B) the Secretary shall execute the leases.*

6 *(2) AMENDMENTS.—To the extent that amend-*
 7 *ments are executed to make the leases described in*
 8 *paragraph (1) consistent with this Act, those amend-*
 9 *ments are authorized, ratified, and confirmed.*

10 **SEC. 7. AUTHORIZATION OF RURAL WATER SYSTEM.**

11 *(a) IN GENERAL.—Subject to the availability of appro-*
 12 *priations, the Secretary, acting through the Bureau, shall*
 13 *plan, design, construct, operate, maintain, replace, and re-*
 14 *habilitate the WMAT rural water system as generally de-*
 15 *scribed in the project extension report dated February 2007.*

16 *(b) COMPONENTS.—The WMAT rural water system*
 17 *under subsection (a) shall consist of—*

18 *(1) a dam and storage reservoir, pumping plant,*
 19 *and treatment facilities located along the North Fork*
 20 *White River near the community of Whiteriver;*

21 *(2) pipelines extending from the water treatment*
 22 *plants to existing water distribution systems serving*
 23 *the Whiteriver, Carrizo, and Cibecue areas, together*
 24 *with other communities along the pipeline;*

1 (3) *connections to existing distribution facilities,*
2 *including public and private water systems in exist-*
3 *ence on the date of enactment of this Act;*

4 (4) *appurtenant buildings and access roads;*

5 (5) *electrical power transmission and distribu-*
6 *tion facilities necessary for services to rural water*
7 *system facilities;*

8 (6) *all property and property rights necessary*
9 *for the facilities described in this subsection; and*

10 (7) *such other project components as the Sec-*
11 *retary determines to be appropriate to meet the water*
12 *supply, economic, public health, and environmental*
13 *needs of the portions of the reservation served by the*
14 *WMAT rural water system, including water storage*
15 *tanks, water lines, and other facilities for the Tribe*
16 *and the villages and towns on the reservation.*

17 (c) *SERVICE AREA.—The service area of the WMAT*
18 *rural water system shall be as described in the Project Ex-*
19 *tension report dated February 2007.*

20 (d) *CONSTRUCTION REQUIREMENTS.—The components*
21 *of the WMAT rural water system shall be planned and con-*
22 *structed to a size that is sufficient to meet the municipal,*
23 *rural, and industrial water supply requirements of the*
24 *WMAT rural water system service area during the period*

1 *beginning on the date of enactment of this Act and ending*
2 *not earlier than December 31, 2040.*

3 *(e) TITLE.—*

4 *(1) IN GENERAL.—Title to the WMAT rural*
5 *water system shall be held in trust by the United*
6 *States in its capacity as trustee for the Tribe.*

7 *(2) CONVEYANCE TO TRIBE.—The Secretary may*
8 *convey to the Tribe title to the WMAT rural water*
9 *system after publication by the Secretary in the Fed-*
10 *eral Register of a statement of findings that—*

11 *(A) the designers’ operating criteria, stand-*
12 *ing operating procedures, emergency action plan,*
13 *and first filling and monitoring criteria are es-*
14 *tablished and in place, and the WMAT rural*
15 *water system has been declared substantially*
16 *complete;*

17 *(B) the funds authorized to be appropriated*
18 *under section 12(b)(3)(B) have been appro-*
19 *priated and deposited in the WMAT Mainte-*
20 *nance Fund; and*

21 *(C) the Tribe has been operating success-*
22 *fully under the established standing operating*
23 *procedures for a period of 5 calendar years.*

24 *(3) ALIENATION AND TAXATION.—Conveyance of*
25 *title to the Tribe pursuant to paragraph (2) does not*

1 *waive or alter any applicable Federal law prohibiting*
2 *alienation or taxation of the WMAT rural water sys-*
3 *tem or the underlying reservation land.*

4 (f) *TECHNICAL ASSISTANCE.*—*The Secretary shall pro-*
5 *vide such technical assistance as is necessary to enable the*
6 *Tribe to plan, design, construct, operate, maintain, and re-*
7 *place the WMAT rural water system, including operation*
8 *and management training.*

9 (g) *APPLICABILITY OF ISDEAA.*—

10 (1) *AGREEMENT FOR SPECIFIC ACTIVITIES.*—*On*
11 *receipt of a request of the Tribe, and in accordance*
12 *with the Indian Self-Determination and Education*
13 *Assistance Act (25 U.S.C. 450 et seq.), the Secretary*
14 *shall enter into an agreement with the Tribe to carry*
15 *out the activities authorized by this section.*

16 (2) *CONTRACTS.*—*Any contract entered into pur-*
17 *suant to the Indian Self-Determination and Edu-*
18 *cation Assistance Act (25 U.S.C. 450 et seq.) for the*
19 *purpose of carrying out any provision of this Act*
20 *shall incorporate such provisions regarding periodic*
21 *payment of funds, timing for use of funds, trans-*
22 *parency, oversight, reporting, and accountability as*
23 *the Secretary determines to be necessary (at the sole*
24 *discretion of the Secretary) to ensure appropriate*
25 *stewardship of Federal funds.*

1 (h) *CONDITION.*—As a condition of construction of the
 2 facilities authorized by this section, the Tribe shall provide,
 3 at no cost to the Secretary, all land or interests in land,
 4 as appropriate, that the Secretary identifies as being nec-
 5 essary for those facilities.

6 (i) *OPERATION AND MAINTENANCE.*—Subject to the
 7 availability of appropriations as provided for in section
 8 12(e), the Secretary, acting through the Bureau, shall oper-
 9 ate and maintain the WMAT rural water system until the
 10 date on which title to the WMAT rural water system is con-
 11 veyed to the Tribe pursuant to subsection (e)(2).

12 **SEC. 8. SATISFACTION OF CLAIMS.**

13 (a) *IN GENERAL.*—The benefits realized by the Tribe
 14 and its members under this Act shall be in full satisfaction
 15 of all claims of the Tribe and its members for water rights
 16 and injury to water rights, except as set forth in the Agree-
 17 ment, under Federal, State, or other law with respect to
 18 the reservation and off-reservation trust land.

19 (b) *USES OF WATER.*—All uses of water on land out-
 20 side of the reservation, if and when such land is subse-
 21 quently and finally determined to be part of the reservation
 22 through resolution of any dispute between the Tribe and the
 23 United States over the location of the reservation boundary,
 24 and any fee land within the reservation put into trust and
 25 made part of the reservation, shall be subject to the max-

1 *imum annual diversion amounts and the maximum annual*
 2 *depletion amounts specified in the Agreement.*

3 *(c) NO RECOGNITION OF WATER RIGHTS.—Notwith-*
 4 *standing subsection (a), nothing in this Act has the effect*
 5 *of recognizing or establishing any right of a member of the*
 6 *Tribe to water on the reservation.*

7 **SEC. 9. WAIVER AND RELEASE OF CLAIMS.**

8 *(a) IN GENERAL.—*

9 *(1) CLAIMS AGAINST THE STATE AND OTHERS.—*
 10 *Except as provided in subsection (b)(1), the Tribe, on*
 11 *behalf of itself and its members, and the United*
 12 *States, acting in its capacity of trustee for the Tribe*
 13 *and its members, as part of the performance of their*
 14 *obligations under the Agreement, are authorized to*
 15 *execute a waiver and release of any claims against*
 16 *the State (or any agency or political subdivision of*
 17 *the State), or any other person, entity, corporation, or*
 18 *municipal corporation under Federal, State, or other*
 19 *law for all—*

20 *(A)(i) past, present, and future claims for*
 21 *water rights for the reservation and off-reserva-*
 22 *tion trust land arising from time immemorial*
 23 *and, thereafter, forever; and*

24 *(ii) past, present, and future claims for*
 25 *water rights arising from time immemorial and,*

1 thereafter, forever, that are based on aboriginal
2 occupancy of land by the Tribe, its members, or
3 their predecessors;

4 (B)(i) past and present claims for injury to
5 water rights for the reservation and off-reserva-
6 tion trust land arising from time immemorial
7 through the enforceability date;

8 (ii) past, present, and future claims for in-
9 jury to water rights arising from time immemo-
10 rial and, thereafter, forever, that are based on
11 aboriginal occupancy of land by the Tribe and
12 its members, or their predecessors; and

13 (iii) claims for injury to water rights aris-
14 ing after the enforceability date for the reserva-
15 tion and off-reservation trust land resulting from
16 off-reservation diversion or use of water in a
17 manner not in violation of the Agreement or
18 State law; and

19 (C) past, present, and future claims arising
20 out of or relating in any manner to the negotia-
21 tion, execution, or adoption of the Agreement, an
22 applicable settlement judgement or decree, or this
23 Act.

24 (2) CLAIMS AGAINST TRIBE.—Except as provided
25 in subsection (b)(3), the United States, in all its ca-

1 *pacities (except as trustee for an Indian tribe other*
 2 *than the Tribe), as part of the performance of its obli-*
 3 *gations under the Agreement, is authorized to execute*
 4 *a waiver and release of any and all claims against*
 5 *the Tribe, its members, or any agency, official, or em-*
 6 *ployee of the Tribe, under Federal, State, or any other*
 7 *law for all—*

8 *(A) past and present claims for injury to*
 9 *water rights resulting from the diversion or use*
 10 *of water on the reservation and on off-reservation*
 11 *trust land arising from time immemorial*
 12 *through the enforceability date;*

13 *(B) claims for injury to water rights aris-*
 14 *ing after the enforceability date resulting from*
 15 *the diversion or use of water on the reservation*
 16 *and on off-reservation trust land in a manner*
 17 *not in violation of the Agreement; and*

18 *(C) past, present, and future claims arising*
 19 *out of or related in any manner to the negotia-*
 20 *tion, execution, or adoption of the Agreement, an*
 21 *applicable settlement judgement or decree, or this*
 22 *Act.*

23 *(3) CLAIMS AGAINST UNITED STATES.—Except*
 24 *as provided in subsection (b)(2), the Tribe, on behalf*
 25 *of itself and its members, as part of the performance*

1 *of the obligations of the Tribe under the Agreement,*
2 *is authorized to execute a waiver and release of any*
3 *claim against the United States, including agencies,*
4 *officials, or employees of the United States (except in*
5 *the capacity of the United States as trustee for other*
6 *Indian tribes), under Federal, State, or other law for*
7 *any and all—*

8 *(A)(i) past, present, and future claims for*
9 *water rights for the reservation and off-reserva-*
10 *tion trust land arising from time immemorial*
11 *and, thereafter, forever; and*

12 *(ii) past, present, and future claims for*
13 *water rights arising from time immemorial and,*
14 *thereafter, forever that are based on aboriginal*
15 *occupancy of land by the Tribe, its members, or*
16 *their predecessors;*

17 *(B)(i) past and present claims relating in*
18 *any manner to damages, losses, or injuries to*
19 *water, water rights, land, or other resources due*
20 *to loss of water or water rights (including dam-*
21 *ages, losses, or injuries to hunting, fishing, gath-*
22 *ering, or cultural rights due to loss of water or*
23 *water rights, claims relating to interference with,*
24 *diversion, or taking of water, or claims relating*
25 *to failure to protect, acquire, or develop water,*

1 *water rights, or water infrastructure) within the*
2 *reservation and off-reservation trust land that*
3 *first accrued at any time prior to the enforce-*
4 *ability date;*

5 *(ii) past, present, and future claims for in-*
6 *jury to water rights arising from time immemo-*
7 *rial and, thereafter, forever that are based on ab-*
8 *original occupancy of land by the Tribe, its*
9 *members, or their predecessors; and*

10 *(iii) claims for injury to water rights aris-*
11 *ing after the enforceability date for the reserva-*
12 *tion and off-reservation trust land resulting from*
13 *the off-reservation diversion or use of water in a*
14 *manner not in violation of the Agreement or ap-*
15 *plicable law;*

16 *(C) past, present, and future claims arising*
17 *out of or relating in any manner to the negotia-*
18 *tion, execution, or adoption of the Agreement, an*
19 *applicable settlement judgment or decree, or this*
20 *Act;*

21 *(D) past and present claims relating in any*
22 *manner to pending litigation of claims relating*
23 *to the water rights of the Tribe for the reserva-*
24 *tion and off-reservation trust land;*

1 (E) past and present claims relating to the
2 operation, maintenance, and replacement of ex-
3 isting irrigation systems on the reservation con-
4 structed prior to the enforceability date that first
5 accrued at any time prior to the enforceability
6 date, which waiver shall only become effective on
7 the full appropriation and payment to the Tribe
8 of \$4,950,000 authorized by section 12(b)(2)(B);

9 (F) future claims relating to operation,
10 maintenance, and replacement of the WMAT
11 rural water system, which waiver shall only be-
12 come effective on the full appropriation of funds
13 authorized by section 12(b)(3)(B) and the deposit
14 of those funds in the WMAT Maintenance Fund;

15 (G) past and present breach of trust and
16 negligence claims for damage to the land and
17 natural resources of the Tribe caused by riparian
18 and other vegetative manipulation by the United
19 States for the purpose of increasing water runoff
20 from the reservation that first accrued at any
21 time prior to the enforceability date; and

22 (H) past and present claims for trespass,
23 use, and occupancy of the reservation in, on, and
24 along the Black River that first accrued at any
25 time prior to the enforceability date.

1 (b) *RESERVATION OF RIGHTS AND RETENTION OF*
2 *CLAIMS.—*

3 (1) *RESERVATION OF RIGHTS AND RETENTION*
4 *OF CLAIMS BY TRIBE AND UNITED STATES.—*

5 (A) *IN GENERAL.—Notwithstanding the*
6 *waiver and release of claims authorized under*
7 *subsection (a)(1), the Tribe, on behalf of itself*
8 *and the members of the Tribe, and the United*
9 *States, acting as trustee for the Tribe and mem-*
10 *bers of the Tribe, shall retain any right—*

11 (i) *subject to subparagraph 16.9 of the*
12 *Agreement, to assert claims for injuries to,*
13 *and seek enforcement of, the rights of the*
14 *Tribe and members of the Tribe under the*
15 *Agreement or this Act in any Federal or*
16 *State court of competent jurisdiction;*

17 (ii) *to assert claims for injuries to, and*
18 *seek enforcement of, the rights of the Tribe*
19 *under the judgment and decree entered by*
20 *the court in the Gila River adjudication*
21 *proceedings;*

22 (iii) *to assert claims for injuries to,*
23 *and seek enforcement of, the rights of the*
24 *Tribe under the judgment and decree en-*

1 *tered by the court in the Little Colorado*
2 *River adjudication proceedings;*

3 *(iv) to object to any claims by or for*
4 *any other Indian tribe, Indian community*
5 *or nation, or dependent Indian community,*
6 *or the United States on behalf of such a*
7 *tribe, community, or nation;*

8 *(v) to participate in the Gila River ad-*
9 *judication proceedings and the Little Colo-*
10 *rado River adjudication proceedings to the*
11 *extent provided in subparagraph 14.1 of the*
12 *Agreement;*

13 *(vi) to assert any claims arising after*
14 *the enforceability date for injury to water*
15 *rights not specifically waived under this*
16 *section;*

17 *(vii) to assert any past, present, or fu-*
18 *ture claim for injury to water rights*
19 *against any other Indian tribe, Indian com-*
20 *munity or nation, dependent Indian com-*
21 *munity, allottee, or the United States on be-*
22 *half of such a tribe, community, nation, or*
23 *allottee; and*

24 *(viii) to assert any past, present, or fu-*
25 *ture claim for trespass, use, and occupancy*

1 *of the reservation in, on, or along the Black*
2 *River against Freeport-McMoRan Copper &*
3 *Gold, Inc., Phelps Dodge Corporation, or*
4 *Phelps Dodge Morenci, Inc. (or a prede-*
5 *cessor or successor of those entities), includ-*
6 *ing all subsidiaries and affiliates of those*
7 *entities.*

8 *(B) AGREEMENT.—On terms acceptable to*
9 *the Tribe and the United States, the Tribe and*
10 *the United States are authorized to enter into an*
11 *agreement with Freeport-McMoRan Copper &*
12 *Gold, Inc., Phelps Dodge Corporation, or Phelps*
13 *Dodge Morenci, Inc. (or a predecessor or suc-*
14 *cessor of those entities), including all subsidiaries*
15 *and affiliates of those entities, to resolve the*
16 *claims of the Tribe relating to the trespass, use,*
17 *and occupancy of the reservation in, on, and*
18 *along the Black River.*

19 *(2) RESERVATION OF RIGHTS AND RETENTION*
20 *OF CLAIMS BY TRIBE AGAINST UNITED STATES.—Not-*
21 *withstanding the waiver and release of claims author-*
22 *ized under subsection (a)(3), the Tribe, on behalf of*
23 *itself and the members of the Tribe, shall retain any*
24 *right—*

1 (A) subject to subparagraph 16.9 of the
2 Agreement, to assert claims for injuries to, and
3 seek enforcement of, the rights of the Tribe and
4 members under the Agreement or this Act, in
5 any Federal or State court of competent jurisdic-
6 tion;

7 (B) to assert claims for injuries to, and seek
8 enforcement of, the rights of the Tribe and mem-
9 bers under the judgment and decree entered by
10 the court in the Gila River adjudication pro-
11 ceedings;

12 (C) to assert claims for injuries to, and seek
13 enforcement of, the rights of the Tribe and mem-
14 bers under the judgment and decree entered by
15 the court in the Little Colorado River adjudica-
16 tion proceedings;

17 (D) to object to any claims by or for any
18 other Indian tribe, Indian community or nation,
19 dependent Indian community, or the United
20 States on behalf of such a tribe, community, or
21 nation;

22 (E) to assert past, present, or future claims
23 for injury to water rights or any other claims
24 other than a claim to water rights, against any
25 other Indian tribe, Indian community or nation,

1 *dependent Indian community, or the United*
2 *States on behalf of such a tribe, community, or*
3 *nation;*

4 *(F) to assert claims arising after the en-*
5 *forceability date for injury to water rights result-*
6 *ing from the drilling of wells or pumping of*
7 *water from land located within national forest*
8 *land as of the effective date of the Agreement in*
9 *the south 1/2 of T. 9 N., R. 24 E.; south 1/2 of*
10 *T. 9 N., R. 25 E.; north 1/2 of T. 8 N., R. 24*
11 *E.; north 1/2 of T. 8 N., R. 25 E., if—*

12 *(i) title to that land is no longer re-*
13 *tained by the United States; or*

14 *(ii) water from that land is trans-*
15 *ported off the land for municipal or indus-*
16 *trial use;*

17 *(G) to assert any claims arising after the*
18 *enforceability date for injury to water rights not*
19 *specifically waived under this section;*

20 *(H) to assert any other claims not specifi-*
21 *cally waived under this section; and*

22 *(I) to assert any claim arising after the en-*
23 *forceability date for a future taking by the*
24 *United States of reservation land, off-reservation*
25 *trust land, or any property rights appurtenant*

1 to that land, including any water rights set forth
2 in paragraph 4.0 of the Agreement.

3 (3) *RESERVATION OF RIGHTS AND RETENTION*
4 *OF CLAIMS BY UNITED STATES.*—Notwithstanding the
5 waiver and release of claims authorized under sub-
6 section (a)(2), the United States shall retain any
7 right to assert any claim not specifically waived in
8 that subsection.

9 (c) *EFFECTIVENESS OF WAIVER AND RELEASES.*—Ex-
10 cept as otherwise specifically provided in subparagraphs
11 (E) and (F) of subsection (a)(3), the waivers and releases
12 under subsection (a) shall become effective on the enforce-
13 ability date.

14 (d) *ENFORCEABILITY DATE.*—

15 (1) *IN GENERAL.*—This section takes effect on the
16 date on which the Secretary publishes in the Federal
17 Register a statement of findings that—

18 (A)(i) to the extent the Agreement conflicts
19 with this Act, the Agreement has been revised
20 through an amendment to eliminate the conflict;
21 and

22 (ii) the Agreement, as so revised, has been
23 executed by the Secretary, the Tribe, and the
24 Governor of the State;

1 (B) the Secretary has fulfilled the require-
2 ments of sections 5 and 6;

3 (C) the amount authorized by section 12(a)
4 has been deposited in the White Mountain
5 Apache Tribe Water Rights Settlement Sub-
6 account;

7 (D) the State funds described in subpara-
8 graph 13.3 of the Agreement have been deposited
9 in the White Mountain Apache Tribe Water
10 Rights Settlement Subaccount;

11 (E) the Secretary has issued a record of de-
12 cision approving the construction of the WMAT
13 rural water system in a configuration substan-
14 tially similar to that described in section 7; and

15 (F) the judgments and decrees substantially
16 in the form of those attached to the Agreement as
17 exhibits 12.9.6.1 and 12.9.6.2 have been approved
18 by the respective trial courts.

19 (2) *FAILURE OF ENFORCEABILITY DATE TO*
20 *OCCUR.—If, because of the failure of the enforceability*
21 *date to occur by October 31, 2015, this section does*
22 *not become effective, the Tribe and its members, and*
23 *the United States, acting in the capacity of trustee for*
24 *the Tribe and its members, shall retain the right to*
25 *assert past, present, and future water rights claims*

1 *and claims for injury to water rights for the reserva-*
2 *tion and off-reservation trust land.*

3 (3) *NO RIGHTS TO WATER.*—*On the occurrence of*
4 *the enforceability date, all land held by the United*
5 *States in trust for the Tribe and its members shall*
6 *have no rights to water other than those specifically*
7 *quantified for the Tribe and the United States, acting*
8 *in the capacity of trustee for the Tribe and its mem-*
9 *bers, for the reservation and off-reservation trust land*
10 *pursuant to paragraph 4.0 of the Agreement.*

11 (e) *UNITED STATES ENFORCEMENT AUTHORITY.*—
12 *Nothing in this Act or the Agreement affects any right of*
13 *the United States to take any action, including environ-*
14 *mental actions, under any laws (including regulations and*
15 *the common law) relating to human health, safety, or the*
16 *environment.*

17 (f) *NO EFFECT ON WATER RIGHTS.*—*Except as pro-*
18 *vided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and*
19 *(3)(B)(ii) of subsection (a), nothing in this Act affects any*
20 *rights to water of the Tribe, its members, or the United*
21 *States acting as trustee for the Tribe and members, for land*
22 *outside the boundaries of the reservation or the off-reserva-*
23 *tion trust land.*

24 (g) *ENTITLEMENTS.*—*Any entitlement to water of the*
25 *Tribe, its members, or the United States acting as trustee*

1 *for the Tribe and members, relating to the reservation or*
 2 *off-reservation trust land shall be satisfied from the water*
 3 *resources granted, quantified, confirmed, or recognized with*
 4 *respect to the Tribe, members, and the United States by the*
 5 *Agreement and this Act.*

6 *(h) OBJECTION PROHIBITED.—Except as provided in*
 7 *subsection (b)(2)(F), the Tribe and the United States acting*
 8 *as trustee for the Tribe shall not—*

9 *(1) object to the usage of any well located outside*
 10 *the boundaries of the reservation or the off-reservation*
 11 *trust land, as in existence on the enforceability date;*
 12 *or*

13 *(2) object to, dispute, or challenge after the en-*
 14 *forceability date the drilling of any well or the with-*
 15 *drawal and use of water from any well in the Little*
 16 *Colorado River adjudication proceedings, the Gila*
 17 *River adjudication proceedings, or any other judicial*
 18 *or administrative proceeding.*

19 **SEC. 10. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS**
 20 **SETTLEMENT SUBACCOUNT.**

21 *(a) ESTABLISHMENT.—There is established in the*
 22 *Lower Colorado River Basin Development Fund a sub-*
 23 *account to be known as the “White Mountain Apache Tribe*
 24 *Water Rights Settlement Subaccount”, consisting of—*

(1) *the amounts appropriated to the subaccount pursuant to subsections (a) and (d) of section 12, as applicable; and*

(2) *such other amounts as are available, including the funds provided in subparagraph 13.3 of the Agreement.*

(b) *EXPENDITURES AND WITHDRAWALS.—*

(1) *CONTRACTS.—*

(A) *IN GENERAL.—The Tribe may withdraw any portion of the White Mountain Apache Tribe Water Rights Settlement Subaccount on approval by the Secretary pursuant to the terms of an agreement entered into under section 7(g).*

(B) *REQUIREMENTS.—An agreement entered into under section 7(g) shall require that the Tribe shall use the amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount only for the planning, design, and construction of the rural water system, including such sums as are necessary—*

(i) *for the Bureau to carry out oversight of the planning, design, and construction of the rural water system;*

(ii) *to repay any outstanding balance on the loan authorized by the White Moun-*

tain Apache Tribe Rural Water System
Loan Authorization Act (Public Law 110-
390; 122 Stat. 4191); and

(iii) to carry out all required environ-
mental compliance activities associated with
the planning, design, and construction of
the rural water system.

(2) *ENFORCEMENT.*—The Secretary may pursue
such judicial remedies and carry out such adminis-
trative actions as are necessary to enforce an agree-
ment described in paragraph (1) to ensure that
amounts in the White Mountain Apache Tribe Water
Rights Settlement Subaccount are used in accordance
with this section.

(3) *LIABILITY.*—On withdrawal by the Tribe of
amounts in the White Mountain Apache Tribe Water
Rights Settlement Subaccount, the Secretary and the
Secretary of the Treasury shall not retain liability for
the expenditure or investment of those amounts.

(4) *EXPENDITURE PLAN.*—

(A) *IN GENERAL.*—The Tribe shall submit
to the Secretary for approval an expenditure
plan for any portion of the amounts in the sub-
account under this section that the Tribe does
not withdraw pursuant to this subsection.

1 (B) *DESCRIPTION.*—*The expenditure plan*
 2 *shall describe the manner in which, and the pur-*
 3 *poses for which, the amounts remaining in the*
 4 *subaccount will be used.*

5 (C) *APPROVAL.*—*The Secretary shall ap-*
 6 *prove an expenditure plan under this paragraph*
 7 *if the Secretary determines that the plan is—*

8 (i) *reasonable; and*

9 (ii) *consistent with this Act.*

10 (5) *ANNUAL REPORTS.*—*The Tribe shall submit*
 11 *to the Secretary an annual report that describes each*
 12 *expenditure from the White Mountain Apache Tribe*
 13 *Water Rights Settlement Subaccount during the year*
 14 *covered by the report.*

15 (c) *PROHIBITION ON PER CAPITA DISTRIBUTIONS.*—
 16 *No amount of the principal, or the interest or income accru-*
 17 *ing on the principal, of the White Mountain Apache Tribe*
 18 *Water Rights Settlement Subaccount shall be distributed to*
 19 *any member of the Tribe on a per capita basis.*

20 (d) *AVAILABILITY OF FUNDS.*—

21 (1) *IN GENERAL.*—*Amounts in the White Moun-*
 22 *tain Apache Tribe Water Rights Settlement Sub-*
 23 *account shall not be available for expenditure or with-*
 24 *drawal by the Tribe until the enforceability date.*

(2) *INVESTMENT.*—Beginning on the date described in section 9(d), the Secretary shall invest the amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount in accordance with section 403(f)(4) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(4)).

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) *LIMITED WAIVER OF SOVEREIGN IMMUNITY.*—

(1) *IN GENERAL.*—In the case of a civil action described in paragraph (2)—

(A) the United States or the Tribe, or both, may be joined in the civil action; and

(B) any claim by the United States or the Tribe to sovereign immunity from the civil action is waived for the sole purpose of resolving any issue regarding the interpretation or enforcement of this Act or the Agreement.

(2) *DESCRIPTION OF CIVIL ACTION.*—A civil action referred to in paragraph (1) is a civil action filed—

(A) by any party to the Agreement or signatory to an exhibit to the Agreement in a United States or State court that—

1 (i) relates solely and directly to the in-
 2 terpretation or enforcement of this Act or
 3 the Agreement; and

4 (ii) names as a party the United
 5 States or the Tribe; or

6 (B) by a landowner or water user in the
 7 Gila River basin or Little Colorado River basin
 8 in the State that—

9 (i) relates solely and directly to the in-
 10 terpretation or enforcement of section 9 of
 11 this Act and paragraph 12.0 of the Agree-
 12 ment; and

13 (ii) names as a party the United
 14 States or the Tribe.

15 (b) *EFFECT OF ACT.*—Nothing in this Act quantifies
 16 or otherwise affects any water right or claim or entitlement
 17 to water of any Indian tribe, band, or community other
 18 than the Tribe.

19 (c) *LIMITATION ON LIABILITY OF UNITED STATES.*—

20 (1) *IN GENERAL.*—The United States shall have
 21 no trust or other obligation—

22 (A) to monitor, administer, or account for,
 23 in any manner, any amount paid to the Tribe
 24 by any party to the Agreement other than the
 25 United States; or

1 (B) to review or approve the expenditure of
2 those funds.

3 (2) INDEMNIFICATION.—The Tribe shall indem-
4 nify the United States, and hold the United States
5 harmless, with respect to any claim (including claims
6 for takings or breach of trust) arising out of the re-
7 ceipt or expenditure of funds described in paragraph
8 (1)(A).

9 (d) APPLICABILITY OF RECLAMATION REFORM ACT.—
10 The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et
11 seq.) and any other acreage limitation or full-cost pricing
12 provision under Federal law shall not apply to any indi-
13 vidual, entity, or land solely on the basis of—

14 (1) receipt of any benefit under this Act;

15 (2) the execution or performance of the Agree-
16 ment; or

17 (3) the use, storage, delivery, lease, or exchange
18 of CAP water.

19 (e) SECRETARIAL POWER SITES.—The portions of the
20 following named secretarial power site reserves that are lo-
21 cated on the Fort Apache Indian Reservation or the San
22 Carlos Apache Reservation, as applicable, shall be trans-
23 ferred and restored into the name of the Tribe or the San
24 Carlos Apache Tribe, respectively:

1 (1) *Lower Black River* (T. 3 N., R. 26 E.; T. 3
2 N., R. 27 E.).

3 (2) *Black River Pumps* (T. 2 N., R. 25 E.; T.
4 2 N., R. 26 E.; T. 3 N., R. 26 E.).

5 (3) *Carrizo* (T. 4 N., R. 20 E.; T. 4 N., R. 21
6 E.; T. 4^{1/2} N., R. 19 E.; T. 4^{1/2} N., R. 20 E.; T. 4^{1/2}
7 N., R. 21 E.; T. 5 N., R. 19 E.).

8 (4) *Knob* (T. 5 N., R. 18 E.; T. 5 N., R. 19 E.).

9 (5) *Walnut Canyon* (T. 5 N., R. 17 E.; T. 5 N.,
10 R. 18 E.).

11 (6) *Gleason Flat* (T. 4^{1/2} N., R. 16 E.; T. 5 N.,
12 R. 16 E.).

13 (f) *NO EFFECT ON FUTURE ALLOCATIONS.*—Water re-
14 ceived under a lease or exchange of tribal CAP water under
15 this Act shall not affect any future allocation or reallocation
16 of CAP water by the Secretary.

17 (g) *AFTER-ACQUIRED TRUST LAND.*—

18 (1) *REQUIREMENT OF ACT OF CONGRESS.*—

19 (A) *LEGAL TITLE.*—After the enforceability
20 date, if the Tribe seeks to have legal title to addi-
21 tional land in the State of Arizona located out-
22 side the exterior boundaries of the reservation
23 taken into trust by the United States for its ben-
24 efit, the Tribe may do so only pursuant to an

1 *Act of Congress specifically authorizing the*
2 *transfer for the benefit of the Tribe.*

3 *(B) EXCEPTIONS.—Subparagraph (A) shall*
4 *not apply to—*

5 *(i) restoration of land to the reserva-*
6 *tion subsequently and finally determined to*
7 *be part of the reservation through resolution*
8 *of any dispute between the Tribe and the*
9 *United States over the location of the res-*
10 *ervation boundary unless required by Fed-*
11 *eral law; or*

12 *(ii) off-reservation trust land acquired*
13 *prior to January 1, 2008.*

14 *(2) WATER RIGHTS.—*

15 *(A) IN GENERAL.—Under this section, after-*
16 *acquired trust land outside the reservation shall*
17 *not include federally reserved rights to surface*
18 *water or groundwater.*

19 *(B) RESTORED LAND.—Land restored to the*
20 *reservation as the result of resolution of any res-*
21 *ervation boundary dispute between the Tribe and*
22 *the United States, or any fee simple land within*
23 *the reservation that are placed into trust, shall*
24 *have water rights pursuant to section 8(b).*

25 *(3) ACCEPTANCE OF LAND IN TRUST STATUS.—*

1 (A) *IN GENERAL.*—*If the Tribe acquires*
 2 *legal fee title to land that is located within the*
 3 *exterior boundaries of the reservation, the Sec-*
 4 *retary shall accept the land in trust status for*
 5 *the benefit of the Tribe in accordance with appli-*
 6 *cable Federal law (including regulations) for*
 7 *such real estate acquisitions.*

8 (B) *RESERVATION STATUS.*—*Land taken or*
 9 *held in trust by the Secretary under paragraph*
 10 *(3), or restored to the reservation as a result of*
 11 *resolution of a boundary dispute between the*
 12 *Tribe and the United States, shall be deemed to*
 13 *be part of the reservation.*

14 (h) *CONFORMING AMENDMENT.*—*Section 3(b)(2) of the*
 15 *White Mountain Apache Tribe Rural Water System Loan*
 16 *Authorization Act (Public Law 110–390; 122 Stat. 4191)*
 17 *is amended by striking “2013” and inserting “2016”.*

18 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) *RURAL WATER SYSTEM.*—

20 (1) *IN GENERAL.*—*There is authorized to be ap-*
 21 *propriated for the planning, engineering, design, en-*
 22 *vironmental compliance, and construction of the*
 23 *WMAT rural water system \$126,193,000.*

24 (2) *INCLUSIONS.*—*The amount authorized to be*
 25 *appropriated under paragraph (1) shall include such*

1 *sums as are necessary, but not to exceed 4 percent of*
 2 *construction contract costs, for the Bureau to carry*
 3 *out oversight of activities for planning, design, envi-*
 4 *ronmental compliance, and construction of the rural*
 5 *water system.*

6 (b) *WMAT SETTLEMENT AND MAINTENANCE*
 7 *FUNDS.—*

8 (1) *DEFINITION OF FUNDS.—In this subsection,*
 9 *the term “Funds” means—*

10 (A) *the WMAT Settlement Fund established*
 11 *by paragraph (2)(A); and*

12 (B) *the WMAT Maintenance Fund estab-*
 13 *lished by paragraph (3)(A).*

14 (2) *WMAT SETTLEMENT FUND.—*

15 (A) *ESTABLISHMENT.—There is established*
 16 *in the Treasury of the United States a fund to*
 17 *be known as the “WMAT Settlement Fund”, for*
 18 *use by the Tribe in accordance with subpara-*
 19 *graph (C), which shall consist of—*

20 (i) *such amounts as are deposited in*
 21 *the fund under subparagraph (B); and*

22 (ii) *any interest accrued on the depos-*
 23 *ited amounts.*

24 (B) *TRANSFERS TO FUND.—There is au-*
 25 *thorized to be appropriated to the Secretary*

1 \$113,500,000 for deposit in the WMAT Settle-
 2 ment Fund, of which not less than \$4,950,000
 3 shall be used for the rehabilitation of existing ir-
 4 rigation systems.

5 (C) *USE OF FUNDS.*—The Tribe shall use
 6 amounts in the WMAT Settlement Fund for any
 7 of the following purposes:

8 (i) *Fish production, including hatch-*
 9 *eries.*

10 (ii) *Rehabilitation of recreational lakes*
 11 *and existing irrigation systems.*

12 (iii) *Water-related economic develop-*
 13 *ment projects.*

14 (iv) *Protection, restoration, and eco-*
 15 *nomie development of forest and watershed*
 16 *health.*

17 (v) *Any cost overruns for the comple-*
 18 *tion of the WMAT rural water system, as*
 19 *provided in subsection (f).*

20 (3) *WMAT MAINTENANCE FUND.*—

21 (A) *ESTABLISHMENT.*—There is established
 22 in the Treasury of the United States a fund to
 23 be known as the “WMAT Maintenance Fund”,
 24 consisting of such amounts as are deposited in
 25 the fund under subparagraph (B), together with

1 *any interest accrued on those amounts, for use*
 2 *by the Tribe in accordance with subparagraph*
 3 *(C).*

4 *(B) TRANSFERS TO FUND.—There is au-*
 5 *thorized to be appropriated to the Secretary*
 6 *\$50,000,000 for deposit in the WMAT Mainte-*
 7 *nance Fund.*

8 *(C) USE OF FUNDS.—The Tribe or the Sec-*
 9 *retary, as applicable, shall use amounts in the*
 10 *WMAT Maintenance Fund only for the oper-*
 11 *ation, maintenance, and replacement costs asso-*
 12 *ciated with the delivery of water through the*
 13 *rural water system.*

14 *(4) ADMINISTRATION.—The Secretary shall man-*
 15 *age the Funds in accordance with the American In-*
 16 *dian Trust Fund Management Reform Act of 1994*
 17 *(25 U.S.C. 4001 et seq.), including by investing*
 18 *amounts in the Funds in accordance with—*

19 *(A) the Act of April 1, 1880 (25 U.S.C.*
 20 *161); and*

21 *(B) the first section of the Act of June 24,*
 22 *1938 (25 U.S.C. 162a).*

23 *(5) AVAILABILITY OF AMOUNTS FROM FUNDS.—*
 24 *Amounts in the Funds shall be available for expendi-*

1 *ture or withdrawal only after the enforceability date*
2 *in accordance with subsection (g).*

3 (6) *EXPENDITURE AND WITHDRAWAL.—*

4 (A) *TRIBAL MANAGEMENT PLAN.—*

5 (i) *IN GENERAL.—The Tribe may*
6 *withdraw all or part of amounts in the*
7 *Funds on approval by the Secretary of a*
8 *tribal management plan as described in the*
9 *American Indian Trust Fund Management*
10 *Reform Act of 1994 (25 U.S.C. 4001 et*
11 *seq.).*

12 (ii) *REQUIREMENTS.—In addition to*
13 *the requirements under the American In-*
14 *dian Trust Fund Management Reform Act*
15 *of 1994 (25 U.S.C. 4001 et seq.), a tribal*
16 *management plan under this subparagraph*
17 *shall require that the Tribe shall spend any*
18 *amounts withdrawn from the Funds in ac-*
19 *cordance with the purposes described in*
20 *paragraph (2)(C) or (3)(C).*

21 (iii) *ENFORCEMENT.—The Secretary*
22 *may take judicial or administrative action*
23 *to enforce the provisions of a tribal manage-*
24 *ment plan under this subparagraph to en-*
25 *sure that any amounts withdrawn from the*

1 *Funds under the plan are used in accord-*
2 *ance with this Act and the Agreement.*

3 *(iv) LIABILITY.—If the Tribe exercises*
4 *the right to withdraw amounts from the*
5 *Funds, neither the Secretary nor the Sec-*
6 *retary of the Treasury shall retain any li-*
7 *ability for the expenditure or investment of*
8 *the amounts.*

9 *(B) EXPENDITURE PLAN.—*

10 *(i) IN GENERAL.—The Tribe shall sub-*
11 *mit to the Secretary for approval an ex-*
12 *penditure plan for any portion of the*
13 *amounts in the Funds that the Tribe does*
14 *not withdraw under the tribal management*
15 *plan.*

16 *(ii) DESCRIPTION.—The expenditure*
17 *plan shall describe the manner in which,*
18 *and the purposes for which, amounts of the*
19 *Tribe remaining in the Funds will be used.*

20 *(iii) APPROVAL.—On receipt of an ex-*
21 *penditure plan under clause (i), the Sec-*
22 *retary shall approve the plan if the Sec-*
23 *retary determines that the plan is reason-*
24 *able and consistent with this Act and the*
25 *Agreement.*

1 (iv) *ANNUAL REPORT.*—For each of the
 2 *Funds, the Tribe shall submit to the Sec-*
 3 *retary an annual report that describes all*
 4 *expenditures from the Fund during the year*
 5 *covered by the report.*

6 (C) *CERTAIN PER CAPITA DISTRIBUTIONS*
 7 *PROHIBITED.*—No amount in the Funds shall be
 8 *distributed to any member of the Tribe on a per*
 9 *capita basis.*

10 (c) *COST INDEXING.*—All amounts authorized to be ap-
 11 *propriated under subsections (a) and (b) shall be adjusted*
 12 *as may be required to reflect the changes since October 1,*
 13 *2007, in the construction cost indices applicable to the types*
 14 *of construction involved in the construction of the WMAT*
 15 *rural water supply system, the maintenance of the rural*
 16 *water supply system, and the construction or rehabilitation*
 17 *of the other development projects authorized under sub-*
 18 *section (b)(2)(C).*

19 (d) *EMERGENCY FUND FOR INDIAN SAFETY AND*
 20 *HEALTH.*—

21 (1) *DEFINITION OF EMERGENCY FUND FOR IN-*
 22 *DIAN SAFETY AND HEALTH.*—In this subsection, the
 23 term “Emergency Fund for Indian Safety and
 24 Health” means the Emergency Fund for Indian Safe-
 25 ty and Health established by section 601(a) of the

1 *Tom Lantos and Henry J. Hyde United States Glob-*
2 *al Leadership Against HIV/AIDS, Tuberculosis, and*
3 *Malaria Reauthorization Act of 2008 (22 U.S.C. 7601*
4 *et seq.).*

5 (2) *INITIAL TRANSFER.*—*Not later than 90 days*
6 *after the date of enactment of this Act, such amounts*
7 *as are available, but not to exceed \$50,000,000, in the*
8 *Emergency Fund for Indian Safety and Health shall*
9 *be transferred to the White Mountain Apache Tribe*
10 *Water Rights Settlement Subaccount.*

11 (3) *SUBSEQUENT TRANSFER.*—*Effective begin-*
12 *ning on January 1, 2012, if the Secretary determines*
13 *that, on an annual basis, the deadline described in*
14 *section 9(d)(2) is not likely to be met because the*
15 *amount authorized by subsection (a) has not been ap-*
16 *propriated and deposited in the White Mountain*
17 *Apache Tribe Water Rights Settlement Subaccount,*
18 *not more than \$50,000,000 of the amounts in the*
19 *Emergency Fund for Indian Safety and Health shall*
20 *be transferred to the White Mountain Apache Tribe*
21 *Water Rights Settlement Subaccount, as necessary to*
22 *complete the WMAT rural water system project.*

23 (4) *LIMITATION.*—*The total amount transferred*
24 *from the Emergency Fund for Indian Safety and*
25 *Health to the White Mountain Apache Tribe Water*

1 *Rights Settlement Subaccount under paragraphs (2)*
 2 *and (3) shall not exceed \$100,000,000.*

3 *(e) OPERATION, MAINTENANCE, AND REPLACEMENT.—*

4 *(1) IN GENERAL.—There is authorized to be ap-*
 5 *propriated to the Secretary \$2,500,000 for the oper-*
 6 *ation, maintenance, and replacement costs of the*
 7 *WMAT rural water system, to remain available until*
 8 *the conditions described in subsection (g) have been*
 9 *met.*

10 *(2) SUBSEQUENT FUNDING.—Beginning on Jan-*
 11 *uary 1, 2021, the Tribe or the Secretary, as applica-*
 12 *ble, may use amounts deposited in the WMAT Main-*
 13 *tenance Fund under subsection (b)(3)(B) for oper-*
 14 *ation, maintenance, and replacement costs of the*
 15 *WMAT rural water system.*

16 *(f) COST OVERRUNS.—On a determination by the Sec-*
 17 *retary that the amount authorized to be appropriated under*
 18 *subsection (a) is not sufficient for the completion of the*
 19 *WMAT rural water system, there are authorized to be ap-*
 20 *propriated such sums as are necessary, but not to exceed*
 21 *an additional \$25,000,000, to complete the WMAT rural*
 22 *water system, to be derived by transfer from the amounts*
 23 *authorized to be appropriated to the Secretary for deposit*
 24 *in the WMAT Settlement Fund under subsection (b)(2)(B)*

1 *in such amounts as the Secretary, in concurrence with the*
 2 *Tribe, determines to be appropriate.*

3 *(g) CONDITIONS.—The amounts authorized to be ap-*
 4 *propriated to the Secretary for deposit in the WMAT Main-*
 5 *tenance Fund, together with any interest accrued thereon,*
 6 *under subsection (b)(3), and any interest accruing on the*
 7 *WMAT Settlement Fund under subsection (b)(2), shall not*
 8 *be available for expenditure or withdrawal until the later*
 9 *of—*

10 *(1) December 31, 2020; and*

11 *(2) the date on which the Secretary determines*
 12 *that the conditions described in section 9(d) have been*
 13 *met.*

14 **SEC. 13. ANTIDEFICIENCY.**

15 *The United States shall not be liable for failure to*
 16 *carry out any obligation or activity authorized to be carried*
 17 *out, subject to appropriations, under this Act (including*
 18 *any such obligation or activity under the Agreement) if ade-*
 19 *quate appropriations for that purpose are not provided by*
 20 *Congress.*

21 **SEC. 14. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

22 *If the Secretary fails to publish in the Federal Register*
 23 *a statement of findings as required under section 9(d) by*
 24 *not later than October 31, 2015—*

25 *(1) effective beginning on November 1, 2015—*

1 (A) *this Act is repealed; and*

2 (B) *any action carried out by the Secretary,*
3 *and any contract entered into, pursuant to this*
4 *Act shall be void;*

5 (2) *any amounts appropriated under subsections*
6 *(a), (b), (d), and (e) of section 12, together with any*
7 *interest accrued on those amounts, shall immediately*
8 *revert to the general fund of the Treasury; and*

9 (3) *any other amounts deposited in the White*
10 *Mountain Apache Tribe Water Settlement Subaccount*
11 *(including any amounts paid by the State in accord-*
12 *ance with the Agreement), together with any interest*
13 *accrued on those amounts, shall immediately be re-*
14 *turned to the respective sources of those funds.*

15 **SEC. 15. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

16 *In carrying out this Act, the Secretary shall promptly*
17 *comply with all applicable requirements of—*

18 (1) *the National Environmental Policy Act of*
19 *1969 (42 U.S.C. 4321 et seq.);*

20 (2) *the Endangered Species Act of 1973 (16*
21 *U.S.C. 1531 et seq.);*

22 (3) *all other applicable Federal environmental*
23 *laws; and*

24 (4) *all regulations promulgated under the laws*
25 *described in paragraphs (1) through (3).*

Union Calendar No. 228

11TH CONGRESS
2^D Session

H. R. 1065

[Report No. 111-391]

A BILL

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

JANUARY 12, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed